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(Proposed) Attorney for John J. Menchaca, former chapter 7 trustee

*Fortis est veritas*

**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

In re  
ALEXANDER CALDERON, an individual,  
  
Debtor.  
  
SSN # xxx-xx-2756

Case No. 2:12-bk-29726-BR  
Chapter 7

**EX PARTE APPLICATION TO REOPEN  
BANKRUPTCY CASE TO ADMINISTER  
UNSCHEDULED ASSET AND TO  
REAPPOINT A CHAPTER 7 TRUSTEE;  
DECLARATION IN SUPPORT THEREOF  
[11 U.S.C. § 350(b), Fed. R. Bank. P. 5010  
and Loc. Bankr. R. 5010-1]**

**[Filed concurrently with Order Granting Ex  
Parte Application to Reopen Bankruptcy  
Case]**

Date: [No hearing necessary]  
Time: [No hearing necessary]  
Place: U.S. Courthouse  
Courtroom 1668  
255 E. Temple St.  
Los Angeles, CA 90012

**TO THE HONORABLE BARRY RUSSELL, UNITED STATES BANKRUPTCY JUDGE,  
THE DEBTOR AND OTHER PARTIES IN INTEREST:**

Comes now John J. Menchaca, the former duly appointed and acting chapter 7 trustee (the "Trustee") of the bankruptcy estate (the "Estate") of the above-captioned debtor Alexander Calderon, an individual (the "Debtor"), in Case No. 2:12-bk-29726-BR (the "Bankruptcy Case"), who hereby applies *ex parte* (the "Application") to reopen the Bankruptcy Case and to reappoint a

chapter 7 trustee. The Application is made on the basis of the following facts.

1. The Debtor filed a voluntary chapter 7 petition, schedules (the "Schedules") and a statement of affairs in the Bankruptcy Case on June 5, 2012 (the "Petition Date").

a. The Schedules and Statements of Affairs scheduled personal property (excluding automobiles and cash) of just \$6,000 (the "Apparel, Household Good and Furnishings"). Unsecured, priority debt of \$70,000.00 and unsecured, non-priority debt of \$66,618.00 was scheduled by the Debtor.

b. A comparison of the Debtor's Schedules I and J showed a monthly income deficit of -\$230.00. The Debtor explained in his Schedule I: "Debtor closed his business Lexco Imports, Inc. in January, 2012. Currently he is working on a deal by deal basis to import and export goods. Income is estimate of future earnings."

c. The Trustee filed a no asset report in the Bankruptcy Case on August 20, 2012. The Debtor received his discharge on September 17, 2012 and the Bankruptcy Case was closed on August 16, 2013.

2. On July 20, 2013 (after the Debtor's discharge but before the Bankruptcy Case was closed), a fire loss (the "Fire") occurred at the Debtor's residence at which inter alia personal property was destroyed (the "Insurance Claim"). Since the Fire, the Debtor has submitted an inventory of personal property with a claimed replacement cost in excess of \$345,000.

3. Only \$6,000 in Apparel, Household Good and Furnishings were scheduled, not \$345,000, with the difference being undisclosed assets (the "Undisclosed Assets"). The Undisclosed Assets were not disclosed in the Schedules or otherwise brought to the Trustee's attention. At the time the Bankruptcy Case was closed, although the Trustee had exercised due diligence in examination of the Debtor's affairs, the Trustee was not aware of the Undisclosed Assets. See Declaration of the Trustee, attached hereto and incorporated herein at ¶ 4.

4. The Court should order the reappointment of a chapter 7 trustee to recover the Insurance Claim for the benefit of the Debtor's creditors.

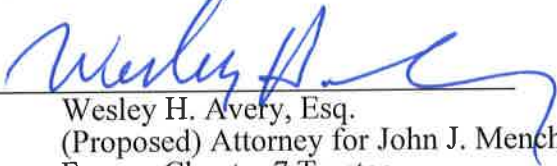
**WHEREFORE**, Trustee prays for orders as follows:

A. That the Application is granted;

- 1 B. That the Bankruptcy Case be reopened; and  
2 C. That the Court direct the United States Trustee to appoint a chapter 7 trustee in the  
3 Bankruptcy Case.  
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5 Date: April 4, 2014

**LAW OFFICES OF WESLEY H. AVERY, APC**

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8 Wesley H. Avery, Esq.  
9 (Proposed) Attorney for John J. Menchaca  
10 Former Chapter 7 Trustee  
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**DECLARATION OF THE TRUSTEE**

I, John J. Menchaca, declare:

1. I was the duly appointed and acting chapter 7 trustee (the "Trustee") of the bankruptcy estate (the "Estate") of Alexander Calderon, an individual (the "Debtor"), in Case No. 2:12-bk-29726-BR. I have personal knowledge, information or belief of the facts set forth below, and, if called as a witness, could and would competently testify thereto under oath. This declaration is made in support of the attached *ex parte* (the "Application") to reopen the Bankruptcy Case and to reappoint a chapter 7 trustee. The Application is made on the basis of the following facts.

2. The Debtor filed a voluntary chapter 7 petition, schedules (the "Schedules") and a statement of affairs in the Bankruptcy Case on June 5, 2012 (the "Petition Date").

- a. The Schedules and Statements of Affairs scheduled personal property (excluding automobiles and cash) of just \$6,000 (the "Apparel, Household Good and Furnishings"). Unsecured, priority debt of \$70,000.00 and unsecured, non-priority debt of \$66,618.00 was scheduled by the Debtor.
- b. A comparison of the Debtor's Schedules I and J showed a monthly income deficit of -\$230.00. The Debtor explained in his Schedule I: "Debtor closed his business Lexco Imports, Inc. in January, 2012. Currently he is working on a deal by deal basis to import and export goods. Income is estimate of future earnings."
- c. The Trustee filed a no asset report in the Bankruptcy Case on August 20, 2012. The Debtor received his discharge on September 17, 2012 and the Bankruptcy Case was closed on August 16, 2013.

3. On July 20, 2013 (after the Debtor's discharge but before the Bankruptcy Case was closed), a fire loss (the "Fire") occurred at the Debtor's residence at which inter alia personal property was destroyed (the "Insurance Claim"). Since the Fire, the Debtor has submitted an inventory of personal property with a claimed replacement cost in excess of \$345,000.

4. Only \$6,000 in Apparel, Household Good and Furnishings were scheduled, not \$345,000, with the difference being undisclosed assets (the "Undisclosed Assets"). The

1 Undisclosed Assets were not disclosed in the Schedules or otherwise brought to the Trustee's  
2 attention. At the time the Bankruptcy Case was closed, although the Trustee had exercised due  
3 diligence in examination of the Debtor's affairs, the Trustee was not aware of the Undisclosed  
4 Assets.

5 5. The Court should order the reappointment of a chapter 7 trustee to recover the  
6 Insurance Claim for the benefit of the Debtor's creditors.

7 I declare under penalty of perjury under the laws of the United States of America that the  
8 foregoing is true and correct.

9 Executed this 4th day of April, 2014, at Los Angeles, California.

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13 John J. Menchaca  
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## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
6055 E. Washington Blvd., Suite 500  
Los Angeles, CA 90040

A true and correct copy of the foregoing document entitled (*specify*): **Ex Parte Application to Reopen Bankruptcy Case to Administer Unscheduled Asset and to Reappoint a Chapter 7 Trustee** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 4/8/2014, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Ray Garwacki rgarwacki@prodigy.net, garwackilaw2@prodigy.net  
Merdaud Jafarnia bknotice@mccarthyholthus.com, mjafarnia@mccarthyholthus.com  
William D May laurel@srwadelaw.com  
John J Menchaca (TR) jmenchaca@menchacacpa.com, ca87@ecfcbis.com; igaeta@menchacacpa.com  
United States Trustee (LA) ustpreion16.la.ecf@usdoj.gov  
Stephen R Wade laurel@srwadelaw.com

☐ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (date) 4/8/2014, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) 4/8/2014, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Honorable Barry R. Russell, US Bankruptcy Court, 255 E. Temple Street, Suite 1660, Los Angeles, CA 90012

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

4/8/2014  
Date

Jennifer Phan  
Printed Name

/s/Jennifer Phan  
Signature

Alexander Calderon  
2053 Evening Side Drive  
West Covina, CA 91792

Cal Bank & Trust  
c/o Peter Duncan  
401 'B' Street, Suite 1500  
San Diego, CA 92101

CitiMortgage  
5280 Corporate Drive  
Bankruptcy Department  
Attn MC0023  
Frederick, MD 21703

Citibank  
PO Box 790034  
St Louis, MO 63179

County of Los Angeles  
Treasurer Tax Collector  
225 N. Hill St Room 122  
Los Angeles, CA 90012

Internal Revenue Service  
Centralized Insolvency Operations  
PO Box 7346  
Philadelphia, PA 19101

Kuebler & Associates  
43500 Ridge Park Dr # 104  
Temecula, CA 92590

Marcus Family Law Center  
732 W. State Street  
El Centro, CA 92243

Mb Fin Svcs  
36455 Corporate Drive  
Farmington Hill, MI 48331

Nissan Motor Acceptance Corporation  
Loss Recovery  
PO Box 660366  
Dallas, TX 75266

The Huntington National Bank  
c/o Hemar, Rousso & Heald LLP  
15910 Ventura Blvd  
Encino, CA 91436

US Bank  
PO Box 5229  
Cincinnati, OH 45201

Wells Fargo Bank Nv Na  
Call 800-225-5935  
Chose account type in automated atten  
Des Moines, IA 50306

William D. May  
350 W. Fourth Street  
Claremont, CA 91711